

STATE OF NEW MEXICO
COUNTY OF CHAVEZ
FIFTH JUDICIAL DISTRICT COURT

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Connied Lea Gibson Andrews,
Individually and as Personal
Representative of Tommy
Lindell Andrews, Deceased,

Plaintiff,

vs.

No. D-504-CV-2006-01258

Volume I

United States Steel
Corporation, et al.,
Defendants.

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VIDEOTAPED DEPOSITION OF
MARK NICAS, Ph.D, MPH, CIH
BERKELEY, CALIFORNIA
May 9, 2008

REPORTED BY: RICHARD M. RAKER, CSR NO. 3445
FILE NO.: 800086

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16 Deposition of MARK NICAS, Ph.D, MPH, CIH,
17 taken on behalf of Defendants, at Doubletree Hotel,
18 200 Marina Boulevard, Berkeley, California,
19 commencing at 9:32 a.m., May 9, 2008, before Richard
20 M. Raker, CSR No. 3445.

REPORTER'S CERTIFICATE

I, RICHARD M. RAKER, CSR #3445, Certified
Shorthand Reporter, certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time the witness was put under oath by me;

That the testimony of the witness and all
objections made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative
or employee of any attorney or of any of the parties,
nor financially interested in the action.

I declare under penalty of perjury under the
laws of the State of California that the foregoing is
true and correct.

Dated this 15th day of May, 2008.

RICHARD M. RAKER, C.S.R. No. 3445

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1 getting in through dermal absorption. So there is no
 2 statement saying, And therefore the employer shall
 3 limit the amount of skin contact with benzene to so
 4 many minutes per day to so much surface area.
 5 But, to me, the discussions showing that
 6 dermal absorption can lead to an equivalent
 7 inhalation exposure shows me that OSHA was cognizant
 8 of the fact that dermal absorption should be
 9 accounted for, although it never in the language of
 10 the standard actually has a dermal absorption limit
 11 to it.
 12 Q. And in that discussion in the '87
 13 preamble, OSHA ultimately determined that the
 14 potential dermal exposures that it was discussing
 15 there were so small they'd be irrelevant?
 16 A. I'm not sure that's true.
 17 Q. Well, they were discussing it. That was
 18 in the context of --
 19 A. Of .1 per -- I think they were
 20 discussing it in the context of whether you needed a
 21 warning for more than .1 percent benzene in your
 22 product.
 23 Q. In looking at dermal exposures to
 24 products with less than .1 percent benzene, OSHA
 25 didn't determine that there was significant risk from

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1 A. Certainly.
 2 Q. How many times did you also tell the
 3 employer, And, oh, by the way, in addition to these
 4 inhalation exposures, I've also separately calculated
 5 these dermal exposures your workers are getting? Did
 6 you ever do that?
 7 A. I don't recall doing that.
 8 Q. In Terry Andrews' affidavit, did he give
 9 you any information about whether or not the Liquid
 10 Wrench his father used was from an aerosol or a
 11 nonaerosol can? And you're welcome to look back at
 12 it. I'm not trying to -- it's probably folder
 13 number 6, would be my guess.
 14 A. Not in the affidavit. He may have had a
 15 statement in the deposition. I just don't recall.
 16 Q. As you sit here right now, then, if what
 17 you said earlier -- I think I interpreted it as
 18 you're relying on the affidavit for your exposure
 19 assessments.
 20 A. For the -- certainly for the frequency
 21 of use and the amount of time and contact. Yeah.
 22 Q. Do you have an opinion as you sit here
 23 now as to the relative amount of Mr. Andrews' use of
 24 aerosol Liquid Wrench as opposed to nonaerosol? Do
 25 you have an opinion either way?

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1 those exposures, true?
 2 A. You know, I don't remember. I'm -- I
 3 don't remember exactly what they said. They may have
 4 said that. I don't know.
 5 Q. Maybe in another case we'll have a
 6 chance to spend some more time on that.
 7 During the time that you worked as an
 8 industrial hygienist throughout your career, how many
 9 times did you ever calculate a worker's dermal
 10 exposure in the course of giving an employer advice
 11 about limiting its worker's exposures?
 12 A. I don't think I ever calculated a dermal
 13 exposure. It was more like, You need to prevent
 14 dermal exposure.
 15 Q. You did take air-sampling results or you
 16 oversaw air-sampling results during your time as a
 17 practicing industrial hygienist in the '70s?
 18 A. Yeah. I took them.
 19 Q. You took them. Okay.
 20 And would you ever report those to the
 21 employers?
 22 A. Certainly.
 23 Q. And would you do estimates of
 24 time-weighted average exposures to various chemicals
 25 based upon those air-monitoring results?

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1 A. No. I think we went over this
 2 previously.
 3 Q. Okay. And if the facts were that
 4 aerosol Liquid Wrench contained no benzene, then
 5 would it be fair to say that your exposure estimate
 6 for Mr. Andrews is somewhere between zero, which
 7 would account for all aerosol, and a high of the
 8 number you reported in your report?
 9 A. Well, I don't think it would go to zero,
 10 because other people have talked about using
 11 nonaerosol Liquid Wrench, so clearly that was around.
 12 But it would be -- depending upon the -- if there
 13 were no benzene in the aerosol Liquid Wrench and if
 14 you said that there was a certain portion of
 15 Mr. Andrews' Liquid Wrench use that was the aerosol,
 16 then there would be a proportionate effect on the
 17 cumulative prevention of exposure to Liquid Wrench.
 18 Q. Okay. I think this is my last line of
 19 questions.
 20 Do you recall these witnesses being
 21 asked repeatedly in their depositions did they ever
 22 recall seeing a skull and crossbones on the Liquid
 23 Wrench cans? Do you recall those questions?
 24 A. I recall some questions of the skull and
 25 crossbones.

48 (Pages 186 to 189)